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TESTIMONY

OF

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THE ENVIRONMENTAL TECHNOLOGY COUNCIL

Committee on Government Reform

Subcommittee on Regulatory Affairs

U.S. House of Representatives

Hearing on

Response to the Report "Regulatory Reform of the U.S. Manufacturing Sector"

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My name is Scott Slesinger. I am Vice-President for Governmental Affairs at the Environmental Technology Council. I want to thank the Committee for requesting our views on OMB's list of environmental protection regulations targeted for reform. The ETC represents environmental service companies, many of them small businesses, that recycle, treat and dispose of industrial and hazardous wastes. Many of our companies are working with their Gulf Coast customers to clean up the hazardous waste left behind by Hurricane Katrina. However, the vast majority of services we provide are for the normal processing of chemicals, pharmaceuticals, and other waste streams from American industrial processes. Our facilities are stringently regulated under the Resource Conservation and Recovery Act and the Toxic Substances Control Act, among other environmental, health and safety laws.

Because our expertise is with RCRA and TSCA, I will limit my comments to those regulations that affect our activities. Those proposals are:

1) The definition of solid waste
2) Deregulating electroplating sludge
3) Disposal of PCBs into municipal landfills

Let me begin with the first proposal, which would radically change the RCRA program and potentially exclude billions of pounds of hazardous wastes from current safeguards.

The Definition of Solid Waste

> **# 42** "Under current rules under the Resource Conservation and Recovery Act (RCRA), certain waste streams are regulated as hazardous wastes, even when they are being recycled. The agency should clarify that a material that is being sent for recycling is not subject to regulation as a hazardous waste because it is not being 'discarded'. This reform would increase recycling rates while reducing the costs of managing hazardous wastes." ***Regulatory Reform of the U.S. Manufacturing Sector, 2005.***

OMB is correct that hazardous waste, when recycled, is subject to RCRA management standards. This is exactly what Congress intended. The RCRA statute defines "hazardous waste management" to include the "recovery" of "material or energy" from hazardous wastes. The House bill that became the 1984 Amendments to RCRA included a section 8, which made clear that: "The Administrator shall, promulgate such regulations as may be necessary to protect human health and environment ***ensuring that the use, reuse, recycling, and reclamation of hazardous wastes*** identified or listed under this section is conducted in a manner consistent with such protection." The Conference Committee omitted this provision from the final amendments because EPA already had this statutory authority. Indeed, a year later in 1985 EPA promulgated the regulations that apply to the recycling of hazardous wastes, and the courts have upheld these regulations.

So OMB is simply wrong when it broadly says in its report that hazardous wastes sent for recycling should not be subject to RCRA regulation because they are not

discarded. Many materials that are recyclable, such as spent solvents, electroplating sludges, and steel furnace dusts, are discarded materials and should be properly managed as hazardous wastes when sent to recycling facilities. A broad exemption of all hazardous materials that are recycled from even the minimum standards for tracking, financial assurance, and safe management would create future Superfund sites and fail to adequately protect the public health.

Extensive Safeguards Protect the Public and the Environment from Hazardous Wastes

The Resource Conservation and Recovery Act has established a comprehensive program for managing hazardous waste. A manifest system is a paper system that tracks the shipment of waste from waste generation to ultimate disposal or destruction, commonly called "cradle to grave" tracking. Rules set procedures for handling and storing waste. Record keeping, employee training, waste characterization and accident prevention plans are required. Facilities that treat, store and dispose of waste must obtain state or federal permits, and they must provide financial assurance so as not to saddle taxpayers with the cleanup burden if they close or have accidents. This protective law has been successful in leading U.S. companies to better manage and reduce their use of hazardous materials and has lead to fewer Superfund sites and a marked decrease in midnight dumping. Many countries have used RCRA as a template.

Under the industry recommended and OMB endorsed proposal, none of the RCRA safeguards described above would apply to recycled hazardous wastes. There would be no tracking or recordkeeping system to ensure the material reaches the recycler, no employee training, no accident prevention, and no financial assurance to ensure proper closure and cleanup of the recycling facility. Under the economics that govern hazardous waste recycling, recyclers are usually paid to take the waste. Without tracking, there is often an economic incentive to dump the waste along the road side. That is the reason most states who commented on the EPA proposed rule, rejected it.

In the EPA economic analysis of the narrower proposed rule[1], the major cost savings were in the avoided costs for the safeguards listed above. Ironically, in violation of Executive Order 12866, EPA failed to analyze the increased likelihood of spills and increase in Superfund sites if these safeguards were removed and unregulated entities with untrained employees were handling these hazardous wastes.[2] Our comments pointed out more than 50 cases from EPA and state files of recycling sites that had caused serious environmental releases. *ETC Damage Case Attachment to the ETC Comments on the Proposed Rule on the Definition*

[1] On October 28, 2003, EPA proposed to redefine "solid waste" so that hazardous waste recycled within the same industry would not be subject to RCRA. The OMB endorsed proposal would expand the universe of excluded waste to hazardous waste recycled by anyone. The change does not impact the EPA economic assessment. The economic analysis placed no weight on what entity would do the recycling.

[2] "The Agency notes that there is the potential for hazardous wastes to be released over time from land based units (that may or may not result in a risk to human health or the environment). EPA also notes that there is potential risk from extracting natural resources and processing them into goods for public consumption. It is difficult to assess the net effects of this proposal on the probability of releases of toxic constituents to the environment. The Agency solicits comment on this question. *Economic Assessment of the Association of Battery Recyclers Proposed Rule, EPA, June 27, 2003 RCRA-2002-0031-0002.pdf.* At pages 7-4

of Solid Waste, http://www.etc.org/ETC_Damage_Cases.pdf We understand that since the end of the comment period on EPA's proposal, EPA has identified over 200 hazardous waste recycling facilities requiring remediation work.

Proposed Rule's Potential Environmental and Economic Effects

Recycling hazardous waste rather than disposing of it is a laudable goal. The EPA argues that this proposal's goal is to encourage recycling rather than disposal. However, our review of the economic analysis of the original EPA proposal showed only a miniscule increase in recycling. *ETC Comments on the Definition of Solid Waste, pages 45-51*, http://www.etc.org/ETC_Detailed_Comments.pdf. The fact is that recycling, if it makes economic sense, occurs today. Removing some costs of regulation will have a marginal increase in recycling, but at a large increase in risk. This is really a proposal to encourage *unregulated* recycling of toxic materials rather than recycling carried out properly by *regulated* facilities.

The major benefit to generators of waste is not increased recycling or even less expensive handling of hazardous waste. The major economic benefit is diverting Superfund liabilities from waste generators to state and federal governments. Under current law, if a generator sends a *waste* to a recycling facility that subsequently becomes a Superfund site, the government can seek to recover cleanup costs from both the recycling facility (who is usually insolvent once a catastrophe occurs) and the waste generators. But under EPA's proposed rule, the generator will be able to escape liability because the hazardous material being recycled would be considered a *commodity* instead of a *waste*. This leaves the taxpayers on the hook for potentially many millions of dollars in cleanup costs.

The Agency has also failed to consider the financial impact on taxpayers who will have to pay the bill for closure of failed or bankrupt recyclers**.** Eliminating the tracking and training requirements makes mismanagement and spills more likely. At this same time, eliminating the financial assurance mechanism leaves communities with the cost of the next generation of Superfund sites.

As we recently learned after Katrina, sometimes an ounce of prevention is worth a pound of cure.

All that being said, there certainly are ways that EPA can provide exclusions from the full RCRA standards for certain types of waste materials that are recycled with conditions that are adequately protective. For example, EPA could by regulation allow an exclusion, provided basic conditions are met such as tracking to the recycling facility to ensure the material is delivered and not dumped; training of employees on the hazards posed by the recyclable material; and financial assurance to ensure cleanup in the event of a release or closure. We are certainly interested in working with EPA and OMB on this type of reasonable regulatory reform.

Electroplating Sludge

#48 "Under the Resource Conservation and Recovery Act (RCRA), metal precipitate sludge is considered an F006 listed hazardous waste when a manufacturing facility ships it off site for metals recovery. This determination discourages reuse, recycling and reclamation by increasing the cost of recycling these valuable materials. The agency should exempt recycled electroplating sludge from hazardous waste management requirements to reduce management costs while protecting the environment." ***Regulatory Reform of the U.S. Manufacturing Sector, 2005.***

OMB's proposal would deregulate recycling of electroplating sludge, one of the most toxic wastes in America. This sludge typically contains dangerous levels of cadmium, chromium, cyanides, and lead. The electroplating industry has made major strides over the years in decreasing the risks in its operations and increasing their recycling. However, their argument is similar to the one on the definition of solid waste; if the cost or recycling were lower, by deregulating the handling, shipping, and storing, there would be less landfilling and more recycling. A survey of our members demonstrates that recyclable levels of F006 <u>are not being landfilled</u> as the electroplating industry has argued, but are already being recycled. If someone sends us sludges with recyclable levels of metals, our companies will reclaim the metals. Removing this dangerous waste stream from regulation for a miniscule or zero increase in recycling is offering an economic benefit for one industry which transfers the risk to the taxpayer if something goes awry.

This proposal is really a subset of the Definition of Solid Waste proposal. For the reasons listed above, the benefits, if any, of the proposal are greatly offset by the increased environmental risk and taxpayer burden.

PCBs in Municipal Landfills

#45 "The agency should clarify that all PCB remediation waste containing small amounts of PCBs can be disposed, on its as-found concentration, in a municipal solid waste landfill. This clarification will reduce the costs of disposal without causing environmental harm." ***Regulatory Reform of the U.S. Manufacturing Sector, 2005.***

Most PCBs must be chemically treated or incinerated. However, PCBs that are spilled in soils can often be disposed in TSCA hazardous waste landfills, and EPA allows cleanup wastes with PCBs below 50 ppm to be disposed in sanitary municipal landfills under protective requirements. These requirements, called the self-implementing option, include: public notice, sampling plans, preparation of a cleanup plan that must be signed and certified, specific verification sampling every 1.5 meters, and the possibility that the regulators will require additional cleanup requirements. One of the benefits of going through this oversight and planning under the self-implementing option is that low levels of PCBs could be disposed at very low cost in municipal landfills. However, because of the protective requirements, the number of responsible parties that take advantage of the self-implementing option are few, the spills affected are small, and the total PCBs going into municipal landfills is limited.

PCB cleanups that do not utilize the self-implementing option occur without the knowledge or oversight of EPA, state or emergency responders. OMB is suggesting that these unsupervised cleanups be given the benefits of the self-implementing option with none of the protective conditions. It is the same as arguing if some teenagers who take driver's training qualify to pay less for insurance, then all teenagers should pay less.

Making the proposed change would give companies going through a non-public cleanup an unsafe economic incentive to dilute the PCBs so that the contaminated soils could be disposed in a municipal landfill. EPA calls this "intentional or fortuitous dilution."

The major concern with this OMB directive is that there is no evidence that significantly increasing the volumes of PCBs disposed in municipal landfills is safe. It is just common sense that a narrow exception for a small volume of PCBs does not mean it is safe to expand the exemption to thousands of tons of PCBs then will then be disposed in sanitary municipal landfills. There is no science that is consistent with this proposal.

A Reform That Lowers Industry Cost While Not Increasing Risk

I do not mean by my testimony to discourage reasonable efforts to lower regulatory burdens. For instance, we are working with our customers, EPA, states, and Chairman Davis to replace the RCRA paper waste tracking system mentioned above with an electronic system. The paper manifest tracks hazardous waste from cradle to grave and is the largest continuing paperwork burden that EPA places on industry. We want to move forward with an electronic manifest that would save industry and states over $100 million a year. We would appreciate OMB's assistance in combating the bureaucratic obstacles that are delaying this worthwhile project.

Thank you for hearing our views. I look forward to your questions.